

Senate Bill No. 489

CHAPTER 1005

An act to add and repeal Section 2166.5 of the Elections Code, and to add and repeal Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, relating to public records, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed
with Secretary of State September 30, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 489, Alpert. Public records: confidential information.

(1) Under existing law, the California Public Records Act, requires that any public record be open to inspection at all times during the regular office hours of a state or local agency and provides that every person has a right to inspect any public record or writing, with specified exceptions. Existing law relating to public records also provides for the confidentiality of certain voter registration information and certain information relating to the victims of crime.

This bill would establish a program until January 1, 2005, under which an adult person, or a guardian on behalf of a minor or an incapacitated person, states that he or she is a victim of domestic violence, as defined, and fears for his or her safety, and designates the Secretary of State as the agent for service of process and receipt of mail. When the Secretary of State certifies the person as a program participant, his or her actual address is confidential. The bill would hold harmless the office of the Secretary of State from any liability in any action brought by any person injured or harmed as a result of the handling of first-class mail on behalf of program participants. The bill would also permit a program participant to vote in a confidential manner, as specified, and permit the participant to make marriage application information confidential. The bill would specify the grounds for termination of certification. This bill would make it a misdemeanor to make a false statement in an application, thereby creating a state-mandated local program.

(2) Existing law provides that the home address, telephone number, occupation, precinct number and prior registration information on a voter registration card is confidential. It prohibits that information from appearing on any computer terminal list, affidavit, duplicate affidavit, or other medium routinely available to the public at the county elections official's office.

This bill would, in addition, permit any person filing a new affidavit of registration or reregistration to have his or her address and telephone number appearing on the affidavit or any list, roster, or

index prepared from the affidavit, declared confidential upon presentation of certification that the person is a participant in the address confidentiality of victims and domestic violence program.

This bill would impose a state-mandated local program by requiring that any person granted confidentiality pursuant to this bill be considered an absent voter for subsequent elections until the county elections official is notified otherwise by the Secretary of State or the voter.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would appropriate \$227,023 to the Secretary of State for the costs of specified provisions of the bill for the 1998–99 fiscal year.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 2166.5 is added to the Elections Code, to read:

2166.5. (a) Any person filing with the county elections official a new affidavit of registration or reregistration may have the information relating to his or her residence address and telephone number appearing on the affidavit, or any list or roster or index prepared therefrom, declared confidential upon presentation of certification that the person is a participant in the Address Confidentiality for Victims of Domestic Violence program pursuant to Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code.

(b) Any person granted confidentiality under subdivision (a) shall:

(1) Be considered an absent voter for all subsequent elections or until the county elections official is notified otherwise by the Secretary of State or in writing by the voter. A voter requesting termination of absent voter status thereby consents to placement of his or her residence address and telephone number in the roster of voters.

(2) In addition to the required residence address, provide a valid mailing address to be used in place of the residence address for election, scholarly, or political research, and government purposes. The elections official, in producing any list, roster, or index may, at his or her choice, use the valid mailing address or the word “confidential” or some similar designation in place of the residence address.

(c) No action in negligence may be maintained against any government entity or officer or employee thereof as a result of disclosure of the information that is the subject of this section unless by a showing of gross negligence or willfulness.

(d) Subdivisions (a) and (b) shall not apply to any person granted confidentiality upon receipt by the county elections official of a written notice by the address confidentiality program manager of the withdrawal, invalidation, expiration, or termination of the program participant’s certification.

(e) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 2. Chapter 3.1 (commencing with Section 6205) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 3.1. ADDRESS CONFIDENTIALITY FOR VICTIMS OF DOMESTIC
VIOLENCE

6205. The Legislature finds that persons attempting to escape from actual or threatened domestic violence frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, to enable interagency cooperation with the Secretary of State in providing address confidentiality for victims of domestic violence, and to enable state and local agencies to accept a program participant’s use of an address designated by the Secretary of State as a substitute mailing address.

6205.5. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(a) “Address” means a residential street address, school address, or work address of an individual, as specified on the individual’s application to be a program participant under this chapter.

(b) “Domestic violence” means an act as defined in Section 273.5 of the Penal Code.

(c) “Program participant” means a person certified as a program participant under Section 6206.

6206. (a) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person

may apply to the Secretary of State to have an address designated by the Secretary of State serve as the person's address or the address of the minor or incapacitated person. An application shall be completed in person at a community-based victims' assistance program. The application process shall include a requirement that the applicant shall meet with a victims' assistance counselor and receive orientation information about the program. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State and if it contains all of the following:

(1) Documentation of any of the following:

(A) A police report indicating domestic violence.

(B) A temporary or permanent restraining order.

(C) A stay of three or more nights in a domestic violence shelter facility in the last year.

(2) A sworn statement by the applicant that the applicant has good reason to believe both of the following:

(A) That the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence.

(B) That the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made.

(3) A statement of whether there are any existing court orders involving the applicant for child support, child custody, or child visitation, and whether there are any active court actions involving the applicant for child support, child custody, or child visitation, the name and address of legal counsel of record, and the last known address of the other parent or parents involved in those court orders or court actions.

(4) A designation of the Secretary of State as agent for purposes of service of process and for the purpose of receipt of mail.

(A) Service on the Secretary of State of any summons, writ, notice, demand, or process shall be made by delivering to the address confidentiality program personnel of the Office of the Secretary of State two copies of the summons, writ, notice, demand, or process.

(B) If a summons, writ, notice, demand, or process is served on the Secretary of State, the Secretary of State shall immediately cause a copy to be forwarded to the program participant at the address shown on the records of the address confidentiality program so that the summons, writ, notice, demand, or process is received by the program participant within three days of the Secretary of State's having received it.

(C) The Secretary of State shall keep a record of all summonses, writs, notices, demands, and processes served upon the Secretary of State under this section and shall record the time of that service and the Secretary of State's action.



(D) The office of the Secretary of State and any agent or person employed by the Secretary of State shall be held harmless from any liability in any action brought by any person injured or harmed as a result of the handling of first-class mail on behalf of program participants.

(5) The mailing address where the applicant can be contacted by the Secretary of State, and the phone number or numbers where the applicant can be called by the Secretary of State.

(6) The address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence.

(7) The signature of the applicant and of any individual or representative of any office designated in writing under Section 6208.5 who assisted in the preparation of the application, and the date on which the applicant signed the application.

(b) Applications shall be filed with the office of the Secretary of State.

(c) Upon filing a properly completed application, the Secretary of State shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State shall by rule establish a renewal procedure.

(d) Upon certification, in any case where there are court orders or court actions identified in paragraph (2) of subdivision (a) of Section 6206, the Secretary of State shall, within 10 days, notify the other parent or parents of the address designated by the Secretary of State for the program participant and the designation of the Secretary of State as agent for purposes of service of process. The notice shall be given by mail, return receipt requested, postage prepaid, to the last known address of the other parent to be notified. A copy shall also be sent to that parent's counsel of record.

(e) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, is guilty of a misdemeanor. A notice shall be printed in bold type and in a conspicuous location on the face of the application informing the applicant of the penalties under this subdivision.

6206.5. (a) If the program participant obtains a name change, he or she loses certification as a program participant.

(b) The Secretary of State may cancel a program participant's certification if there is a change in the residential address from the one listed on the application, unless the program participant provides the Secretary of State with at least seven days' prior notice of the change of address.

(c) The Secretary of State may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable.

(d) The Secretary of State shall cancel certification of a program participant who applies using false information.

(e) Any records or documents pertaining to a program participant shall be retained and held confidential for a period of three years after termination of certification and then destroyed.

6206.7. (a) A program participant may withdraw from program participation by submitting to the address confidentiality program manager written notification of withdrawal and his or her current identification card. Certification shall be terminated on the date of receipt of this notification.

(b) The address confidentiality program manager may terminate a program participant's certification and invalidate his or her authorization card for any of the following reasons:

(1) The program participant's certification term has expired and certification renewal has not been completed.

(2) The address confidentiality program manager has determined that false information was used in the application process or that participation in the program is being used as a subterfuge to avoid detection of illegal or criminal activity or apprehension by law enforcement.

(3) The program participant no longer resides at the residential address listed on the application, and has not provided at least seven days' prior notice in writing of a change in address.

(4) A service of process document or mail forwarded to the program participant by the address confidentiality program manager is returned as nondeliverable.

(5) The program participant obtains a legal name change.

(c) If termination is a result of paragraph (1), (3), (4), or (5) of subdivision (b), the address confidentiality program manager shall send written notification of the intended termination to the program participant. The program participant shall have five business days in which to appeal the termination under procedures developed by the Secretary of State.

(d) The address confidentiality program manager shall notify in writing the county elections official and authorized personnel of the appropriate county clerk's office, county recording office, and department of health of the program participant's certification withdrawal, invalidation, expiration, or termination.

(e) Upon receipt of this termination notification, authorized personnel shall transmit to the address confidentiality program manager all appropriate administrative records pertaining to the program participant and the record transmitting agency is no longer responsible for maintaining the confidentiality of a terminated program participant's record.

(f) Following termination of program participant certification as a result of subdivision (b), the address confidentiality program manager may disclose information contained in the participant's application.

6207. (a) A program participant may request that state and local agencies use the address designated by the Secretary of State as his or her address. When creating a public record, state and local agencies shall accept the address designated by the Secretary of State as a program participant's substitute address, unless the Secretary of State has determined both of the following:

(1) The agency has a bona fide statutory or administrative requirement for the use of the address which would otherwise be confidential under this chapter.

(2) This address will be used only for those statutory and administrative purposes and shall not be publicly disseminated.

(b) A program participant may request that state and local agencies use the address designated by the Secretary of State as his or her address. When modifying or maintaining a public record, excluding the record of any birth, fetal death, death, or marriage registered under Division 102 (commencing with Section 102100) of the Health and Safety Code, state and local agencies shall accept the address designated by the Secretary of State as a program participant's substitute address, unless the Secretary of State has determined both of the following:

(1) The agency has a bona fide statutory or administrative requirement for the use of the address which would otherwise be confidential under this chapter.

(2) This address will be used only for those statutory and administrative purposes and shall not be publicly disseminated.

(c) A program participant may use the address designated by the Secretary of State as his or her work address.

(d) The office of the Secretary of State shall forward all first-class mail and all mail sent by a governmental agency to the appropriate program participants. The office of the Secretary of State shall not handle or forward packages regardless of size or type of mailing.

(e) Notwithstanding subdivision (a), program participants shall comply with the provisions specified in subdivision (d) of Section 1808.21 of the Vehicle Code if requesting suppression of the records maintained by the Department of Motor Vehicles. Program participants shall also comply with all other provisions of the Vehicle Code relating to providing current address information to the department.

6207.5. A program participant who is otherwise qualified to vote may seek to register and vote in a confidential manner pursuant to Section 2166.5 of the Elections Code.

6208. The Secretary of State may not make a program participant's address, other than the address designated by the

Secretary of State, available for inspection or copying, except under any of the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency.

(b) If directed by a court order, to a person identified in the order.

(c) If certification has been canceled.

6208.5. The Secretary of State shall designate state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence to assist persons applying to be program participants. Any assistance and counseling rendered by the office of the Secretary of State or its designees to applicants shall in no way be construed as legal advice.

6209. The Secretary of State may adopt rules to facilitate the administration of this chapter by state and local agencies.

6209.5. If a program participant under this chapter notifies the appropriate county clerk as required under rules adopted by the Secretary of State, the county clerk shall not make available for inspection or copying the name and address of a program participant contained in marriage applications and records filed under this chapter, except under either of the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency.

(b) If directed by a court order, to a person identified in the order.

6209.7. (a) Nothing in this chapter, nor participation in this program, affects custody or visitation orders in effect prior to or during program participation. A program participant who falsifies his or her location in order to unlawfully avoid custody or visitation orders is subject to immediate termination from the program and is guilty of a misdemeanor.

(b) Participation in the program does not constitute evidence of domestic violence for purposes of making custody or visitation orders.

6210. (a) Notwithstanding Section 7550.5, the Secretary of State shall submit to the Legislature, no later than January 10 of each year, a report that includes the total number of applications received for the program established by this chapter. The report shall disclose the number of program participants within each county and shall also describe any allegations of misuse relating to election purposes.

(b) The Secretary of State shall commence accepting applications and other activities under this program on July 1, 1999.

(c) Notwithstanding Section 7550.5, the Secretary of State shall submit to the Legislature by January 1, 2004, a report that includes the total number of pieces of mail forwarded to program participants, the number of program participants during the program's duration, the average length of time a participant remains in the program, and the targeted code changes needed to improve the program's efficiency and cost-effectiveness.

6211. This chapter shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 3. The sum of two hundred twenty-seven thousand twenty-three dollars (\$227,023) is hereby appropriated from the General Fund to the Secretary of State for the costs of Sections 1 and 2 of this act for the 1998–99 fiscal year.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

